



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,533	01/24/2002	Nico N. Raczek	01/017 NUT	2351

7590 06/21/2005

ProPat, L.L.C.
2912 Crosby Road
Charlotte, NC 28211-2815

EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,533	RACZEK, NICO N.	
	Examiner	Art Unit	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Page 7 of the specification provides for various combinations and forms for which the sorbic acid and enzyme may be added to the feedstuff, where the sorbic acid “can be admixed with the feedstuffs or single constituents thereof or be admixed dry with the feed, be added before further processing (e.g. extrusion, pelleting etc.) or be metered and dispersed in a mixture.” However, it does not provide guidance or support for the production or use of a solid feed additive which “consists essentially of sorbic acid and at least one active enzyme.” There is no guidance as to what would be included or excluded by the phrase “consists essentially of.” While applicant may argue that this phrase is a commonly known patent term, it is noted that this phrase is commonly used when properly defined and supported by the specification, where the skilled artisan is able to ascertain the scope of the claim. From the specification disclosure, there does not appear to be support for a claim directed to the use of a solid feed additive which “consists essentially of sorbic acid and at least one active enzyme.”

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1761

The recitation of the weight percentage in claim 10 is indefinite, as the reference point to which this is compared (i.e. the feedstuff) is not an actual component of the claim.

In the response, applicant states that although “the feedstuff is not positively recited as part of the combination of claim 10, one skilled in the art would readily understand that the amount of sorbic acid to be added is based upon the amount of the feedstuff for which the recited additive is intended.”

This is not deemed persuasive for the reasons of record. Since the invention of claim 10 is simply sorbic acid and an enzyme – and there is no feedstuff in the claimed invention – the amount of sorbic acid cannot be recited as relative to a feedstuff which is not part of the combination, in order to accurately assess the metes and bounds of the invention. There is no means by which the skilled artisan would be able to determine the amount of sorbic acid in the claimed composition, as the composition encompasses nearly any possible amount, and in any percentage relative to the enzyme in the composition. For example, a composition with three grams of sorbic acid and an active enzyme would appear to meet the claim limitations if added to a theoretical feedstuff of 60 grams, but the same composition would not if the feedstuff were 30 grams. Again, as no feedstuff is recited as part of the claimed invention, then a recitation of a claim component relative to something which is not present, would necessarily be indefinite. As the feedstuff does not exist within the claims, it would be impossible to determine the metes and bounds of the claim (i.e. the amount of sorbic acid present in the additive), based upon the current claim language. In terms of a relative amount, the only component to which the sorbic acid may be recited is the enzyme.

To put it another way, if the skilled artisan was in possession of a composition of an enzyme and sorbic acid, where 200 grams of sorbic acid is present, but was not made aware of the amount of feedstuff to which it is eventually added (as in the present claims), then it would be impossible for the artisan to know if this composition meets the claim limitations.

Similarly, the only components required of claims 12-14, are the sorbic acid and enzyme. The “agricultural livestock feedstuff” may consist of only these two components. This issue has been addressed previously on the record, where applicant has amended claim 1 to comply, yet applicant proceeded to add new claims 12-14 with the same issue. Again, as no actual “feedstuff” component – other than the sorbic acid and enzyme – is recited as present in the claims, such claims are indefinite for the reasons set forth above with regard to claims 10-11.

Claim 3 is indefinite for the recitation of the phrase “various lipases.” It is unclear if this encompasses all lipases, or only certain (“various”) lipases. If the latter, it is unclear as to which lipases

Art Unit: 1761

are included in the recited set. It is suggested that the term “various” be deleted, and the term “lipases” be made singular (“lipase”, or “a lipase”), to correspond to the claim language of line 1 (“the enzyme”).

With regard to the recitation of the phrase “hemicellulase (xylanase)” in claim 3, the use of parentheses is indefinite, as it is unclear whether the limitations in parentheses are part of the claimed invention. Not all hemicellulases are xylanases, and thus the metes and bounds of the claimed invention are unclear.

* Note that the use of parentheses later in claim 3, is acceptable, as this indicates a proper recitation and identification of the (endo-1,4-beta) mannase enzyme.

Claim 13 is indefinite for the recitation of a solid feed additive which “consists essentially of” sorbic acid and an enzyme. Given this phrase, it is unclear as to what is included or excluded within the metes and bounds of the claimed invention. It is unclear as to what types of additive components, other than the sorbate and enzyme(s), might be encompassed by this phrase. Applicant has provided no teaching or guidance as to which potential components might be included in the claim, versus those which would be expected to materially affect the claimed product. Finally, it is unclear as to how “said solid feed additive consists essentially of sorbic acid and at least one active enzyme”, when it is supposedly mixed with the extruded or pelletized “livestock feedstuff”. The metes and bounds of such a composition are not clearly set forth, and are unsupported by the teachings of the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1761

1. Claims 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 73-007,060 (English abstract provided). The reference and rejection are incorporated as cited in a previous Office action.

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At page 13 of the response, applicant states that the reference "discloses sorbic acid within the resulting dissolved silkworm feedstuff in an amount of 0.163 weight percent." Applicant states that "JP 060, expressly requiring acrylic acid, vitamin C and choline chloride, most certainly does not teach feed additives consisting essentially of sorbic acid and at least one active enzyme, as recited in claim 13." Applicant also states that the reference does not teach the limitation of claim 14 where "at least 80% by weight of the sorbic acid exhibits a particle size below 555 microns."

This is not deemed persuasive for the reasons of record. Regarding applicant's statement that the reference "discloses sorbic acid within the resulting dissolved silkworm feedstuff in an amount of 0.163 weight percent," there is no support for this conclusion. Furthermore, regarding claims 12-14, as previously addressed on the record and above with regard to the rejection under 35 USC 112, it is noted that the only components required of the invention of claims 12-14, are the sorbic acid and enzyme. The "agricultural livestock feedstuff" may consist of only these two components, where no further "feedstuff" component – other than the sorbic acid and enzyme – is recited or present. Therefore, sorbic acid present in any amount, would inherently meet the claim limitation for an appropriate amount of (the unspecified) feedstuff.

As stated above, applicant has not provided a clear definition of the claimed invention, regarding the phrase "consists essentially of" (claim 13). The inclusion of acrylic acid, vitamin C and choline chloride would not appear to materially affect the referenced composition, absent any clear and convincing evidence and/or arguments to the contrary, and thus appears to meet the claim limitations. Applicant is not entitled to randomly exclude certain compounds or components from the scope of their claim(s), without first setting forth what the metes and bounds should be. As applicant has not done this, the rejection is maintained for the reasons of record.

JP '060 provides a feedstuff for silkworms which is prepared by forming a "pellet of the essential components, and dipping it into an" aqueous solution containing such components as vitamins, enzymes, and preservatives. The pellets were dipped into a solution which contained sorbic acid at 0.2 parts/liter by weight, as well as other components including vitamins. Thus, the resultant feedstuff comprises both sorbic acid and enzymes, where the sorbic acid is present in an amount "in the range from > 0.0 to 5.0% by weight". Regarding instant claims 10-11, the reference provides "an addition... comprising sorbic

Art Unit: 1761

acid and at least one enzyme" (claim 10), both together in the same feedstuff, while being present separately. Regarding claims 12-13, the pellets are dipped into the liquid solution, providing a solid pelletized composition with the two necessary components. Regarding claim 14, the reference provides a liquid solution containing both sorbate and enzymes. It is noted that the sorbic acid component would inherently be expected to be below 555 microns in particle size, in order to be soluble in the liquid.

2. Claims 10-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Deyoe (US PAT 3,988,483). The reference and rejection are incorporated as cited in a previous Office action.

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At page 9 of the response, applicant argues several points regarding the reference which are not pertinent to the claimed invention, and further, argues points about the instant invention which are not found in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, it is noted that the claims recite the term "comprising", where other components may be included in the composition. Thus, arguments to the fact that the reference includes other components are not deemed persuasive. Applicant also states that in the Deyoe et al. reference, acid is added to deactivate the enzyme. This is not deemed persuasive. The "small amount of acid" does not directly interact with the enzyme, but rather lowers the pH so that the reaction is stopped. This does not render the enzyme incapable of activity, such as by denaturing the enzyme. The reaction is simply stopped, but the enzyme is not "inactive"; it is possible that applicant is confusing the term "inactive" with "denatured". Furthermore, this stated "small amount of acid" is separate from the acid added previously, which "serve principally as mold inhibitors for increasing the storability" of the feedstuffs. Therefore, the sorbic acid and active enzyme are both present in the composition, even prior to the addition of a further "small amount of acid."

Finally, at page 9 of the response, applicant states that the reference does not provide guidance as to an amount of acid to be added to the feedstuff composition, yet then admits that the reference specifically teaches amounts "such as 1.0 and 3.6 wt. %." As stated in the rejection under 35 U.S.C. 112, second paragraph above, the Office is not able to identify an actual amount of sorbic acid within the claimed preparation, and thus the rejection over the reference is maintained for the reasons of record. Therefore, the amounts recited by the reference anticipate the amounts of instant claims 10-12 and 14.

Art Unit: 1761

Regarding claim 14, the reference provides a liquid solution containing both sorbate and enzymes. It is noted that the sorbic acid component would inherently be expected to be below 555 microns in particle size, in order to be soluble in the liquid. As previously addressed on the record and above with regard to the rejection under 35 USC 112, it is noted the only components required of the invention of claims 10-11 and 14, are the sorbic acid and enzyme. The “agricultural livestock feedstuff” may consist of only these two components, where no further “feedstuff” component – other than the sorbic acid and enzyme – is recited or present.

3. Claims 10-11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Brunner (US PAT 6,350,485). The reference and rejection are incorporated as cited in a previous Office action.

Brunner teaches compositions for enhancing palatability of pet food. At columns 3-4, the liquid formula which is added to the pet food is described as comprising “about 0.1-1.0 weight % preservatives such as sorbic acid and about 0.1-2.0 weight % enzymes such as protease.” Note that, although the enzyme and the sorbic acid are in the composition, they are still technically “separate from one another”, as recited in instant claim 11.

Applicant's arguments filed March 15, 2005,, have been fully considered but they are not persuasive. At page 14 of the response, applicant states that “the preservatives are [to] be included within the resulting treated pet food in amounts ranging up to 0.03 wt % based on the weight of the pet food.” This is not deemed persuasive for the reasons of record. Regarding claims 10-11 and 14, also as previously addressed on the record and above with regard to the rejection under 35 USC 112, it is noted that the only components required of the claimed invention are the sorbic acid and enzyme. The “agricultural livestock feedstuff” may consist of only these two components, where no further “feedstuff” component – other than the sorbic acid and enzyme – is recited or present. Therefore, sorbic acid present in *any* amount, would inherently meet the claim limitation for an appropriate amount of (the unspecified) feedstuff. Regarding claim 14, the reference provides a liquid solution containing both sorbate and enzymes. It is noted that the sorbic acid component would inherently be expected to be below 555 microns in particle size, in order to be soluble in the liquid.

4. Claims 1, 8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by McCauley III (US PAT 5,066,498). The reference and rejection are incorporated as cited in a previous Office action.

Art Unit: 1761

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At pages 11-12 of the response, applicant states that the reference "compositions are merely intended as supplements to feeds", and that the reference "is silent as to the amount of supplement to be incorporated into (or administered along with) the feedstuff." Applicant states that the reference, "briefly noting the use of amylase, most certainly does not teach or suggest the active enzymes recited in claim 3 as amended."

This is not deemed persuasive for the reasons of record. Again, at column 3, lines 14-16 and 43-49 of McCauley III, it is clearly stated that the composition may be incorporated with a traditional animal feed, or "may be fed alone." This makes the composition a "feedstuff", which is fed to agricultural livestock. Further to this point, at column 3, lines 56-60, it is stated that "the carrier utilized in the formulation may be any known carrier palatably [sic] to the animal being treated. When treating horses, oatmeal *feed*... is particularly effective for this purpose" (emphasis added). Thus, the reference anticipates the claimed invention, because it teaches a composition comprising an animal feedstuff component (oatmeal feed), sorbic acid in an amount of from 0- 0.4%, and an active enzyme. Column 4 discusses the enzyme, which is present as part of the yeast culture, where it "augments the starch digestion capacity of the horse" (ln. 45-49). Therefore, applicant's comments are conclusionary and fly in the face of the teachings of the reference. Furthermore, it is noted that, as part of the yeast culture included in the feed/supplement composition, the amylase would inherently be "present separate from" the sorbic acid.

5. Claim 10 remain rejected under 35 U.S.C. 102(b) as being anticipated by Leahy et al. The reference and rejection are incorporated as cited in a previous Office action.

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At page 15 of the response, applicant states that the reference "does not teach or suggest the recited agricultural livestock feedstuffs that include from 0.2 to 5.0% by weight sorbic acid and at least one active enzyme." This is not deemed persuasive for the reasons of record.

Leahy et al. disclose the addition of alpha-amylase and sorbic acid (0.10%) to feedstuffs for cattle consumption. As stated previously on the record, and in the rejections under 35 U.S.C. 112, above, the Office is not able to identify an actual amount or percentage of sorbic acid within the instantly claimed *preparation*, which itself does *not* include a feedstuff component (but rather only the enzyme and sorbic acid), and thus the rejection over the reference is maintained for the reasons of record. The composition comprising the enzyme and sorbic acid reads upon the claimed invention.

Art Unit: 1761

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al. Deyoe et al. is taken as cited previously. Further, at column 17 (example VI), the reference demonstrates the administration of the feedstuff to cattle.

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At least some of these arguments with respect to the reference have been addressed above with regard to the rejection under 35 U.S.C. 102(b). To summarize, applicant had stated that in the Deyoe et al. reference, acid is added to deactivate the enzyme. This was not deemed persuasive because the "small amount of acid" does not directly interact with the enzyme, but rather lowers the pH so that the reaction. Therefore, the sorbic acid and active enzyme are both present in the composition, even prior to the addition of a further "small amount of acid."

As previously stated on the record, although a specific amount of sorbic acid used in the feedstuff is not provided in the reference, phosphoric acid is demonstrated as used in amounts of from 1%-3.6% by weight of the preparation (Tables VI-VIII). The reference provides for the addition of an acid, and specifically recited a set including both sorbic acid and phosphoric acid (top col. 7). Given the teaching of the functional equivalency of the acids, it would have been obvious to one of ordinary skill in the art to have utilized any of the acids recited in the list at column 7 in the same approximate amounts relative to the total feedstuff composition as was done with phosphoric acid. Thus, it would have been obvious for one of ordinary skill in the art to have added sorbic acid in an amount of from 1%-3.6% by weight of the feedstuff preparation.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al., in view of Enzyme Nomenclature.

Deyoe et al. is taken as cited above and previously on the record. Further, at column 4, lines 12-14, the reference discloses "the use of an enzyme such as an amylase or the like."

Art Unit: 1761

The Enzyme Nomenclature reference discloses several known glycosidase enzymes, each of which have a classification number of 3.2.1.(x), representing the fact that they all possess the similar activity of hydrolyzing *O*-glycosyl compounds. Alpha- and beta-amylase are the first two enzymes recited (3.2.1.1 and 3.2.1.2, respectively), followed directly by a glucosidase (3.2.1.3), cellulase (3.2.1.4), a glucanase (3.2.1.6), and a xylanase (3.2.1.8).

Regarding claim 3, applicant has previously presented the list of enzymes which may be included in the composition. No significant feature has been shown to differentiate the enzymes in terms of their patentability one over the other, nor their inclusion within the composition, and thus the use of one is not seen as patentably distinct over that of another. Applicant appears to have simply canceled the option of "amylase" from the claims in an attempt to overcome prior art references. However, given the specific recitation in Deyoe regarding "the use of an enzyme such as an amylase or the like", it would have been obvious to one of ordinary skill in the art to have utilized any one of the other known and similarly-functioning enzymes closely related to amylases, such as glucosidase, cellulase, glucanase or xylanase, as disclosed by the Enzyme Nomenclature reference, within the method of the primary reference.

3. Claims 4 and 6-7 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al., as applied to claims 1-2 above, in view of Pais et al. (US PAT 4,482,550).

Applicant's arguments filed March 15, 2005, have been fully considered but they are not persuasive. At pages 14-15 of the response, applicant states that Pais et al. ('550 patent) does not teach or suggest the claimed invention, either alone or in combination with the primary reference, in this case, Deyoe et al. Applicant also states that there is no motivation to combine the references, and that "US 550 instead teaches away from such feedstuffs by noting that a maximum of 0.12 weight percent preservative and the presence of endogenous enzymes."

Again, this is not deemed persuasive for the reasons of record. Initially, it is noted that Pais et al. was cited for its general teaching that known feedstuffs may be administered to a number of different livestock, including chickens, geese, lambs, pigs and cattle. Pais et al. also disclose the fact that such feedstuffs may comprise sorbic acid. Deyoe et al. discloses a feedstuff which is very similar to the invention of claims 1-3, and which provides clear motivation to substitute sorbic acid for phosphoric acid, as stated above and previously on the record. Deyoe et al. already discloses the administration of its feedstuff to cattle.

Applicant states that the '550 patent only teaches the use of sorbic acid in an amount of 0.12 percent, which does not meet the instant claim limitations. This is not deemed persuasive for the reasons

Art Unit: 1761

of record. Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Thus and again, the utilization of compositions containing both enzymes and sorbic acid, with a typical animal feed composition, was suggested by the primary reference itself. In light of the teachings of Pais et al., and the common knowledge of the state of the art at the time the invention was made, it would have been obvious for one of ordinary skill in the art to have utilized the feedstuff disclosed and suggested by Deyoe et al., for administration to various livestock such as chickens, geese, lambs, and pigs. This simple practice would not have involved an inventive step for one of ordinary skill in the art, especially knowing that the feed of agricultural livestock often overlap in relative location and consumption.

4. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCauley III. McCauley III is taken as cited in a previous Office action.

There does not appear to be any patentable distinction, functional difference or advantage between the use of 0.4% sorbic acid, as taught by the reference, and 0.5% as instantly claimed. The difference would not be statistically significant, and would not be expected to show a patentable distinction between the slightly-different amounts. Given the teachings of the reference in light of this information, it would have been obvious to one of ordinary skill in the art to have included sorbic acid in the composition of McCauley III in an amount of 0.5% or even slightly higher. In other words, it would have been equally apparent to include an amount of 0.5% sorbic acid, as it would have to include 0.4%. Finally, at col. 3, ln. 47-48 of McCauley III, it is stated that "the compositions are designed and adapted for forming into pellets", thus meeting the limitations of instant claim 13.

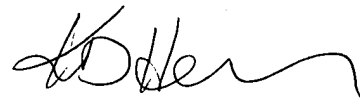
Art Unit: 1761

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**KEITH HENDRICKS
PRIMARY EXAMINER**